

II. REMARKS

A. Introduction

In the May 12, 2009 Office Action, claims 22, 24-25, 28 and 31-34 are noted as pending, and these claims are rejected based on prior art.

In summary of this Response, claims 22, 24 and 25 have been amended, and remarks are provided.

Independent claim 22 has been amended to recite that a portion (2) of the device is bent relative to the linear handle (H) at an acute angle. See, e.g., numbered paragraph 15. Also, in claim 22 the orientation of the tips 4v, 5v or 4h, 5h has been better defined as diverging opposite relative to each other. See, e.g., Figs. 1 and 2. Finally, claims 24 and 25 have been amended to define that the respective tips extend toward their termini upward and downward, or left and right, relative to the handle axis. See again Figs. 1 and 2.

B. Rejection of Claims

Claims 22, 24, 25, 31, 32 and 34 are rejected as being anticipated by U.S. Patent No. 5,514,076, issued to Ley, claim 33 has been rejected as being made obvious by this reference alone, and claim 28 is rejected as being made obvious by this reference in combination with previously cited Grieshaber et al. (U.S. Patent No. 5,716,328).

Claim 34 is separately rejected as being made obvious by the Householder and Barot. Based on a telephone conference with the Examiner, it is understood that the Examiner had meant to reject claim 34 as being made obvious by Ley alone, not these two other references. Thus, not only is dependent claim 34 rejected above as being anticipated by Ley, but the same claim is rejected as being made obvious by this reference.

For the following reasons it is respectfully submitted that the present invention, as recited by amended claims 22, 24-25, 28 and 31-34, was neither anticipated nor rendered obvious by the cited references.

Of these rejected claims, claim 22 is the only independent claim. Also, each rejection has, as its primary reference, Ley.

Ley intends to improve upon "surgical retractors" or "skin hooks or skin impaling devices" by providing a surgical retractor for to expose flesh for invasive surgery, such as shown in Figs. 15, 16 or 17 of the reference. The goal of the Ley device is to allow release of the retractor when pressure that would damage the tissue being retracted is exerted. This is done by relying

on a shape-memory alloy for the retractor. See, e.g., the Abstract and Background of the Invention of the reference.

The Examiner relies on Fig. 13 of Ley for the rejection. Fig. 13 shows a device including a handle 11 to which is attached at a right angle an end ("retractor") 19". The end 19 includes several linear tips ("shafts") 20 extending from the end 19 toward the upper right in the Figure, and each tip 20 has a free terminus ("tine") 21. Each tip 20 of Ley extends in the same general direction, i.e., upwardly toward the termini. The reason that the tips extend in one direction is to grasp and retract tissues in the opposite direction, i.e., toward the end 19, as pressure is exerted in that direction on the handle 11. Using such a retractor(s) causes tissue areas to separate, i.e., to be pulled away from each other, such as shown in Figs. 15-17 of the reference.

In the present invention, as recited by independent claim 22, the end (2) of the device is bent at an acute angle relative to the handle H, whereas the Ley device of Fig. 13 has the "retractor" 19 extending at a right angle. Further, the two tips (4, 5) recited in claim 22 extend opposite to each other. Neither the "shafts" 20 nor the "tines" 21 of Ley extend in opposite directions relative to each other.

Further, claims 24-25 recite a separate feature that, relative to the axis of the handle, the separate tips, 4,5 of the present invention extend upward and downward, or extend left and right, to their respective termini. For these claims the Office Action indicates that the "linear tips diverge from end 19 to form an angle between two linear tips upward and downward/leftward or rightward". However, the relationship recited in claims 24 and 25 is not between the two linear tips per se, but between the two linear tips and the axis of the linear handle. See again, Figs. 1, 2 and 4 of the present application. Ley's "shafts" (20) extend only in one direction toward their termini or "tines" 21, i.e., upper-rightward (see Fig. 13) relative to the axis of the linear handle or rod 11. In Ley, no two shafts or two tines separately extend up and down, or left and right toward the terminus, relative to the axis.

The above-discussed recited structural features of the present invention allow more reliable and less damaging retention of the equatorial capsule during ophthalmic surgery than provided by the prior art. That is, this configuration allows a plurality, e.g., four (numbered paragraphs 28 and 36), of the devices to retain the lens capsule equatorial region in a substantially round configuration. See also Fig. 4 and numbered paragraphs 34-40 of the present application. Particularly, as shown in Figs. 1, 2 and 4, the two linear tips 4, 5 extend outwardly from the equatorial region Eq, since they diverge with respect to each other in opposite directions.

Thus, the Ley device and that of the invention recited in claim 22 are significantly different, at least in regard to how the end (19 vs. 2, respectively) is oriented relative to the handle, and how the tips (20 vs. 4, 5, respectively) are oriented relative to each other. Also, the invention recited by claims 24 and 25 differs from Ley in the orientation of the tips to the handle axis. The reason for the different structures of Ley and the present invention is that for each tool to work, i.e., perform its desired function, the shapes must be different.

In particular regard to the rejection of claim 28, it is respectfully submitted that this reference fails to compensate for the incomplete teaching of Ley discussed above, i.e., the orientation of the tips of the device. Grieshaber et al. is cited for a teaching, i.e., a bent handle and a stopper, both of which relate to the opposite end of the device from the end having the diverging tips.

Finally, dependent claims 31-34 each depend from independent claim 22. For the same reasons as discussed above in relation to the inability of Ley to anticipate claim 22, these dependent claims should also be allowable. Further, these dependent claims recite additional features which, when taken in combination with the features of claim 22 incorporated therein, also should not be anticipated or rendered obvious by Ley.

III. Conclusion

In light of the above amendments and remarks, it is respectfully submitted that claims 22, 24, 25, 28 and 31-34 are now in condition for allowance.

If there are any additional fees associated with this Response, please charge same to our Deposit Account No. 19-3935.

Finally, if there are any formal matters remaining after this Response, the undersigned would appreciate a telephone conference with the Examiner to attend to these matters.

Respectfully submitted,

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